

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **VICE CHAIRMAN MIKE SPRAGUE**, on April 7, 2003
at 10:09 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Dale Mahlum, Chairman (R)
Sen. Bob Keenan (R)
Sen. Sam Kitzenberg (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 758, 4/3/2003
Executive Action: HB 758

{Tape: 1; Side: A}

HEARING ON HB 758

Sponsor: REPRESENTATIVE RONALD DEVLIN, HD 3, TERRY

Proponents: Mark Staples, Montana Tavern Association; Laura Fix, Montana Restaurant Association; Ralph Ferraro, Rocking R Bar in Bozeman; Robert Utick, Bull's Eye Casino & Red Garter Casino; Jan Hernandez, Motherlode Casino; Rich Miller, Gaming Industry Association; Bob Stephens, Dillon State Bank; Ross Bittner, Flippers Casino in Missoula; Ronda Carpenter, Montana Coin Machine Operators Association; Steve Morris, Montana Tavern Association; Sarah Herold, Capital City Bowl; Bob Pavlovich, former tavern owner from Butte; Steve Farstead, Suds Hut/Nickels Gaming; Teri Bingham, casino worker for Nickels Gaming

Opponents: Ward Shanahan, Protect Montana Kids; Mike Kadas, Mayor of Missoula; Steve Kirchhoff, Mayor of Bozeman; Laura Fox, husband died of lung cancer; Dr. Robert Shepard, Physicians for Prevention; Dr. Richard Sargent, American Cancer Society & Physicians for Prevention; Terry Curey, Better Breathers; Ellen Leahy, Missoula City-County Health Department; Alec Hansen, League of Cities and Towns; Tim Burton, City Manager of Helena; Joanne Sherwood, citizen; Randy Gray, Mayor of Great Falls; Tempie Daigle, citizen from Clancy; Elinor Edmunds, citizen; Marcia Youngman, former Mayor of Bozeman; Harriett Meloy, citizen; Kendra McHugh, SASY; Joan Miles, Lewis and Clark County Health Department; Anita Varone, Lewis and Clark County; Brian Close, citizen; REP. JILL COHENOUR, HD 51; Rev. Bob Holmes, citizen; Kelly O'Sullivan, citizen; Judy Scheier of Helena; Myra Baca, Students Advocating Smoke Free Youth; Mona Jamison, Shodair Hospital; Rita Blouke, Montana League of Women Voters; Stan Frasier, citizen; Sami Butler, Montana Nurses Association; Jani McCall, Deaconness-Billings Clinic; Pat Melby, Montana Medical Association; Tom Clinch, citizen; Montana; Jim Ahrens, Montana Hospital Association; Catherine Dratz, representing Health Officers; and written testimony only from Verner Bertelsen, Montana Senior Citizens Association

Opening Statement by Sponsor:

**SENATOR JOE TROPILA, SD 24, GREAT FALLS, opened for
REPRESENTATIVE RONALD DEVLIN, HD 3, TERRY.**

Proponents' Testimony:

Mark Staples, Montana Tavern Association, stated that what everyone was exposed to was not the hodge-podge of local ordinances and how taxes do not flow through our local governments first. In the wake of the Helena all-out ban, the economic fallout was swift, deep and serious. He claimed that East Helena has not suffered economic fallout. He made three points. There would be much hue and cry that this is the stealing of local control. This is alcohol and gambling and most of the control in that sphere is already lodged, almost exclusively, in the state of Montana. In fact, a bill was passed earlier this session to raise fees, just as this does, so that gaming could be regulated by the state. At that point, no one was present complaining about abdication of local control. **Mr. Staples** referenced SB 124 in which the state took what was local control of fees. The cities willingly and excitedly participated in abdicating that control to the state of Montana. All of the other cities in the state would have to make up the gap made by lack of Helena's lack and loss of contributions. That, he said, was why this bill came forth. He guessed that the committee would hear that this bill is about property damage versus health and how could those possible be on the same plane. He asked the committee to keep in mind one major difference. The health risk is entirely voluntary for the person that chooses to expose themselves. The property damage is involuntary. They didn't have a choice whether or not to expose their property to this ban. Everyone has a choice whether to expose themselves to second-hand smoke. Finally, he said the committee would not be taking the decision away from the people. The election was a desperate reaction to an ordinance that was imposed over the advice of their own citizens' advisory council after hearing from other communities with exemptions that worked. He asked the committee to pass the bill.

Laura Fix, Montana Restaurant Association and her family and self, said her family owns and operates several restaurants, bars and casinos in Helena. Although the smoking ordinance had a negative impact on all of their operations, she focused her testimony on Fat Boy and Charlie's, a nightclub, and The River Grille, an upscale restaurant. The purchase price for the liquor license for those operations was \$350K. Ordinance 2911 was passed on June 4th and would begin enforcement right away. Their nightclub business began to deteriorate quite rapidly. Although

they were promised flocks of new customers, they never came. Their smokers left for a competitor 1.3 miles down the road that sits just outside of the city limits and their non-smoking friends went with them. It became more and more difficult for **Ms. Fix** and her family to pay their bills and to make their bank payment. One of their bartenders quit to work in Clancy, where she could make better tips. **Ms. Fix** had to lay off two cocktail waitresses and one other part-time worker. Sales at the nightclub from July through November, 2002, were down \$62K, **EXHIBIT (bus74a01)**. Gaming was down \$13K in that same period. Her family made less money; the state of Montana made less money; the workers that could stay on made less money. Unfortunately, food sales in the restaurant couldn't come close to replacing the \$75K in lost revenue. Her family was stuck with loans they personally guaranteed to the bank and liquor license that isn't worth the hundreds of thousands of dollars that they were paying for it. Each and every night **Ms. Fix** would ask herself how this could have happened. They are a hard-working family. They have created jobs that pay a good living wage. They purchase goods and services from other Montanans. They create tax revenue for their state. She asked the committee to please protect their property rights and support this bill to establish a fair playing field for those who have invested all they have to take on the responsibility of being a business owner. This ordinance never stopped people from smoking. They simply drove 1.3 miles outside of town. In the meantime, her family lost over \$75K; their workers suffered so much; and the state lost revenue that her family was happy to pay.

Ralph Ferraro, Rocking R Bar in Bozeman, told the committee that Bozeman has an ordinance in place that works very well. He felt this bill needed to be passed so the operator has an option or a choice if he/she so chooses to let people smoke in their establishment. **Mr. Ferraro** stated he is President of the Gallatin County Tavern Association, and he knew for a fact that friends of his in the county have experienced increased business due to the people that have the option to go outside of the city of Bozeman to smoke, eat, drink and gamble. He urged the committee to pass the bill.

Bob Utick, Bull's Eye Casino and Red Garter Casino in Helena, distributed a graph that covers the last two years of their businesses in Helena, **EXHIBIT (bus74a02)**. He went on to show the definite dip on the graph for the two years the smoking ban was in effect in Helena. He urged the committee to pay particular attention to the pink (bottom) line. If it goes below the zero mark, **Mr. Utick** and his wife work for free. He doesn't get any return whatsoever on his investment. The two different graphs show that they worked for free for quite a few weeks during the

smoking ban in Helena. He referred to opponents who say September 11, 2001, had a great effect on their business; however, the graph showed that business didn't vary a bit. He noted how interesting it is that, once smoking was allowed, business is better than ever. He said that no one forces anyone to go into their places. When they invested all of their money into these places, the Montana Clean Indoor Act was in place. He personally felt it offered protection enough to tell people where there is and is not smoking. He urged the committee to pass HB 758 to protect the integrity of the license they have, which has been administered by the state, and that they feel is more than enough.

Jan Hernandez, Motherlode Casino, stated Helena has become a test case for strict anti-smoking city ordinances at the expense of local businesses through the efforts of the local and state anti-smoking lobby and their national connections with the big medicine cartel. She submitted to the committee that Helena, Montana, with its limited population and hard economic times cannot afford to be the nation's test case with this city-only ban. When the patrons of privately owned city casinos and bars told their customers last summer they couldn't smoke, those customers did not quit smoking. They simply left town for the casino five minutes away outside the city limits. Equally important, non-smoking customers did not fill those empty seats. Helena's population in 2000 was 25,780 according to the census. That same year, New York City was home to over 8M people. When New York City banned smoking, non-smokers did take the place of those lost customers. There is no such luxury in this small town. They simply lose income. Had the smoking ban been levied statewide, at least everyone would have been on a level playing field with competitors located minutes outside the city. However, as it exists now, they have their hands tied behind their backs and told to somehow stay in the game. A few casinos will stay solvent. The smaller ones will not. Additionally, this ban has been inaccurately compared to OSHA regulations. She worked in the environmental field for 12 years. This is not so, because OSHA regulations are evenly applied statewide. She asked the committee to remember that 100 percent of the citizen-elected House of Representatives voted on the bill and 58 percent voted to approve the bill, because they recognize the economic damage Helena's smoking ban would continue to cause. Neither she nor any other Helena casino or bar owner have taken one penny from Phillip-Morris, R.J. Reynolds, or any other big tobacco company to fight ban. Those who say otherwise are lying.

Rich Miller, Gaming Industries Association, offered wholehearted support of the bill. Remembering that the distribution of gaming taxes is different now, the first quarter of Helena's collections were down \$56K and \$69K the second quarter. Three of the major

of the major casinos in the city never complied with the smoking ordinance. This revenue would have dropped off significantly more had those three casinos complied. This translates into an approximate \$833K gaming revenue loss to the casinos and machine locations that did comply. From a study by the Bureau of Business and Economic Research, gaming makes up about 27 percent of revenues for the typical licensee. When you start running those numbers backwards, the licensees in the city of Helena took somewhere between \$3.5M and \$4M revenue hit. He also urged the committee to support the bill.

Bob Stephens, Dutton State Bank, said the bank is located 35 miles north of Great Falls. The bank bases its loans on a business, including its liquor license. His bank has a loan on a local casino here and feels the value of the liquor license of this particular business has been devalued by the smoking ban in Helena. The bank knows that the income being produced by the bar and casino prior to the ban was great enough to pay the loan payments and other expenses associated with the business. During the period after the ban, June 6 to December 3, they noted a significant drop in the amount deposited in the daily operations checking account. The bank monitors such financial data in their appraisal of how businesses are doing to repay their loans. The decrease was over 40 percent. The owner of the business called the bank and wondered what options he had if he was not able to pay the loan. The bank told the owner they would work with the business, but the loan payments needed to be made in a timely fashion. He went on to discuss the impact of the business before, during, and after the smoking ban as well as the drop in value of liquor licenses in Helena. Because of banking regulations, their customers have to come up with more money to assure repayment of their loan because of the liquor license devaluation. His bank makes loans to agricultural and small businesses. He thought this was a good bill.

Ross Bittner, Flippers Casino in Missoula and Vice President of the Local Chapter of the Montana Tavern Association, said they were fortunate to work with their health department and city council to pass an ordinance which gave bars and casinos exclusion from the smoking ban. The one fear he stated was that things can change. A year or two from now, Missoula could try to change their smoking situation and he would be affected. He stated he can live with the Clean Air Act as can the state.

Ronda Carpenter, Montana Coin Machine Operators Association, appeared as a representative of those people who supply the vending machines, juke boxes, and pool tables to those locations. They rose in support of their customers on this issue. They saw

firsthand the effects of the smoking ban in Helena on small businesses. She asked that the committee concur on HB 758.

Steve Morris, Montana Tavern Association and Helena business owner, was present to support HB 758. He told the committee they would hear about local control. He said taverns are basically regulated by the state of Montana. This bill would allow them to be regulated by the state. He urged the committee's support and presented written testimony from a local beer distributor, **EXHIBIT (bus74a03)**, and a local bank, **EXHIBIT (bus74a04)**.

Sarah Herold, Capital City Bowl, shared that her establishment is a little, 12-lane bowling center that has been in business since 1958. They abided by the smoking ban in Helena. She asked the committee if they knew what chaos is caused by people taking off their bowling shoes and putting on other shoes to run outside to have a cigarette, run back inside, change their shoes again, and then get down on the lanes in time to bowl. They are getting close to the end of their season and have asked their bowlers if they are going to return. Many of them have said they won't return next year if they can't have any fun and have a little cigarette. **Ms. Herold** asked the committee to pass HB 758 to allow her to make some provisions in her business for the smokers so she can keep her business rather than turn it into a parking lot.

Bob Pavlovich, former tavern owner from Butte, spoke for himself and several other tavern owners in his community. He said this is a property rights issue. When he bought his business 10 years ago, he bought the building and the land and he ran his business. It took him 10 years to pay off his business and nobody helped him do it except through **Mr. Pavlovich's** and his brother's efforts. At that time, no one told them if they could smoke in their bar or not. Right now, there are enough federal and state regulations to take care of and run their own business. To now tell him people cannot smoke in his bar is infringing on his property rights.

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Steve Farstead, Suds Hut/Nickels Gaming, said he counts the money for Nickels Gaming Parlor and Suds Hut in Helena seven days a week. Their profits were down 38 percent last summer and their freedom to choose to go to a smoking or non-smoking place was down 100 percent. He supported the bill.

Teri Bingham, casino worker, asked for the right to have a choice to enter a smoking or non-smoking establishment. She said the

smoking ban made it very hard to make a living and expressed her support of the bill.

Opponents' Testimony:

Ward Shanahan, Protect Montana Kids, offered written testimony, **EXHIBIT** (bus74a05) .

Mike Kadas, Mayor of Missoula, thought there was an issue between property rights and public health. The problem is that those are fairly complicated and they take time to consider and understand. In Missoula's case, their ordinance is now just a little more than three years old. They have approximately five different public hearings and at least a dozen meetings with various stakeholders and interest groups over the course of 18 months. In Missoula, the health board, the city council, and the county commissioners approved their ordinance. It took a lot of time and a lot of discussion. This issue is not the breaking of new ground. There is a wealth of economic and health information out there. To do this right, you have to consider all of that. He stated the committee would not be able to do so over the course of the next hour.

Steve Kirchhoff, Mayor of Bozeman, opposed the bill. He said today is the fourth time he ventured to Helena to testify against the legislation that would limit the authority of cities to enact ordinances in response to the expressed wishes of their voters. He was not present at the hearing to speak about business profits, taxes, or property rights. **Mayor Kitchhoff** stated he was present simply to beg the committee to let local voters keep the power of their votes and to not let the might of big government, which is what he said the committee is, to squelch the voices of average people living across the state who may wish to vote for clean air ordinances stricter than that which would be allowed by the passage of this bill. Government should reflect the wishes of those who live under it. Voters in Helena and Bozeman have wished, and who knows how many other municipalities will wish, to live under ordinances stricter than what you would allow by passing this bill. He stated, if the committee passes this bill, they would be telling local voters and their local officials that they don't deserve full voting rights. They would be saying local democracy doesn't matter and that big government is the only game in town. He asked the committee to please keep the faith with local voters who deserve the right to determine their fates by choosing the officials and ordinances they believe are proper. He asked that the committee act with respect for average Montanans and vote against the bill.

Laura Fox of Missoula shared that her husband, Dan Fox, a non-smoker, was diagnosed with small-cell lung cancer in 1995. Since that type of cancer is known to be a "smoker's cancer" found exclusively (98 to 99 percent) in people who smoke, doctors believed his cancer was the result of breathing secondhand smoke. She quote Garon Smith, a well-know chemistry professor at the University of Montana and also a member of the Missoula City-County Health Board, who recently presented at a lecture in Missoula and said, "Genetics loads the gun; environment pulls the trigger." She asked who amongst us knows what our genetic make-up is. Every time we breathe secondhand smoke, we are playing Russian roulette. **Ms. Fox** went on to say that, at the time of his diagnosis, her husband was a very fit mountain climber, runner and health-conscious person. He was her high school sweetheart, a wonderful father to their son, Alan, and a respected employee for the state of Montana. His first exposure to cigarette smoke began as a child living with a parent who was a heavy smoker. His heaviest exposure to secondhand smoke occurred while working for the state of Montana in an office that allowed both co-workers and clients to smoke. This was for a period of seven years. For three years and three months, her husband fought for his life. On March 20, 1999, he passed away at the age of 47. **Ms. Fox** stated she was present at the hearing to tell the committee that the effects of secondhand smoke has a face attached to it ... Dan Fox's face. It is personal. And it is real. Every person has the right to be protected from secondhand smoke. The people of Helena spoke for what they want. The citizens that smoke will adjust, and businesses will survive the change. If the city of New York and the state of California can make these changes, certainly the state of Montana can, too. She asked the committee to stand up for the people of Montana by protecting their health by not passing HB 758, **EXHIBIT (bus74a06)**.

Dr. Robert Shepard, family physician from Helena, submitted a letter supporting his study from Dr. Glantz, Professor of Medicine and the University of California, San Francisco, **EXHIBIT (bus74a07)**, as well as his own written testimony, **EXHIBIT (bus74a08)**.

Dr. Richard Sargent, Physicians for Prevention & The American Cancer Society, presented his extensive compilation of the health effects of secondhand smoke, **EXHIBIT (bus74a09)**, and his written testimony, **EXHIBIT (bus74a10)**.

Terry Curey, Better Breathers Lung Association Club, expressed how interesting it is that HB 758 does not address minor children. It appeared to him that every time he goes into a casino, he sees high chairs and other devices to make their visit comfortable. If the Tavern Association and the owner of the

casinos were so concerned about choice, small children do not have choices like we adults do. If we had a statewide smoking ordinance like the one instituted in Helena, then the playing field would be level. His comment to the committee was for them to look over the issue and consider making this a statewide issue. Maybe the local people have had it right all along.

Ellen Leahy, Health Officer of the Missoula City-County Health Department, wanted to be sure the committee was aware there was a fault assumption afoot that HB 758 would not affect the Missoula ordinance. It would significantly roll back the Missoula ordinance, which does not allow, as HB 758 would, smoking throughout the entire premise, if there is a gaming machine. Their exemption applies only to areas in which liquor is the primary service. HB 758 would open up bowling lanes while children are having parties. It would open up to cabaret licenses. It would open up the entire premise, so there could not be a non-smoking area. Secondly, for all new use in Missoula, only in the exempted area is smoking allowed, and no smoke is allowed to drift into the non-smoking area. So, for new uses, they have two separate ventilation systems going. They don't do that on old uses. They do, however, do it on new uses so that you don't have for the next 30 or 40 decades huge establishments in which you cannot control the drift of smoke. HB 758 seriously rolls back the Missoula ordinance.

Alec Hansen, League of Cities and Towns, shared that at their conference last October in Butte, delegates voted unanimously to defend the right of local governments to regulate clean indoor air quality. He referred to the fiscal effect of the Helena smoking ordinance on the state budget and how it works under HB 124. The numbers show that gambling revenues in Lewis and Clark County were down \$38K during the two fiscal quarters in which the ordinance was in effect. Across the state, gambling revenues were up \$769K, a 3.5 percent increase, which is twice the amount projected HJR 2. Across Montana, gambling revenues are running ahead of projections. The \$38K reduction in Lewis and Clark County is insignificant when you put it alongside the statewide increase. He emphasized the League of Cities and Towns and all of its members wish to protect the right of cities and towns to enact ordinances, because they believe in local control.

Tim Burton, City Manager of Helena, stated the Helena city ordinance was a process and debate and learning and decision making that took over two years. The City-County Board of Health studied the issue, make recommendations to the City Commission, and the City Commission held a series of public hearings and worked through the issue for approximately six months. They then passed the ordinance. After the ordinance was passed, there was

a petition to overturn that ordinance at an election. The election resulted in support of the ordinance by a vote of 62 percent. The ordinance was challenged in District Court, the First Judicial District, and it was upheld. So what they have is an informed electorate debating this issue for over two years, an ordinance and election that followed the law, and a court that upheld the final decision. The City of Helena stood in opposition to HB 758, because they believe the fundamental result of this bill will be to overturn a well-informed, legal election that took place in Helena, Montana.

Joanne Sherwood of Helena, presented written testimony, **EXHIBIT (bus74a11)**.

Randy Gray, Mayor of Great Falls, said that what happened in Missoula and Bozeman happened in Great Falls. They had multiple hearings over a long period of time. They had the time to hear medical testimony. They had the time to hear testimony from business owners. It took them months and months and months to fashion a solution that worked for the City of Great Falls. They asked the legislature to not pre-empt that local solution to each one of the communities. They asked the legislature not to protect the voters that also vote for the members of the legislature to protect them against themselves. They asked the legislature to leave this issue at the local level for local solutions.

{Tape: 2; Side: A}

Tempie Daigle, citizen from Clancy, stated that the committee was being asked to vote on a bill that dismantles an ordinance that the people in Helena passed overwhelmingly. She asked if she was wrong in thinking that government was for the people. She thought it was and that it was time we consider the welfare of the many over the profits of a few. In far many instances, profits trump people, and she thought that's not the kind of society we want to create.

Marsha Youngman, former Mayor of Bozeman, was in office when the Clean Air Indoor Air ordinance began to be discussed. She wanted to reinforce the testimony of Bozeman's present mayor. Their bill was adopted unanimously by a bipartisan city commission and was supported by everyone from doctors to average citizens to bar owners. She related that it will be gutted by HB 758. One of the provisions not yet discussed at the hearing was a good neighbor provision. They allow smoking in bars and casinos, but only if they are good neighbors to other businesses and their smoke does not go into other businesses.

Harriet Melloy of Helena, related a personal story about her sister who died of lung cancer. She asked the committee to vote against HB 758 so that other people's relatives do not die as hers did.

Elinor Edmunds, citizen of Helena, reminded the committee that the people of Helena voted 62 percent in favor of a smoke-free ordinance partly because they see it as a public health issue, because they think all employees, including those in casinos, should be protected.

Kendra McHugh, SASY, said tobacco kills. She received the honor to vote this year, and she thought her voice would be heard. From what she had seen from senators, her voice and vote don't matter.

Joan Miles, Health Officer of Lewis and Clark County, opposed the bill for herself and on behalf of health officers in Gallatin, Butte, Silver Bow, Yellowstone and Cascade counties. She emphasized this bill would not just alter the Helena ordinance. It significantly wipes out every single ordinance that has been passed in this state because of the broad language that is in Section 1.

Anita Varone, Lewis and Clark County Commission Chair, was present on behalf of the commission as well as herself. She lost both of her parents more than 30 years ago as a result of smoking illnesses. More than 40 years ago, physicians told them to quit smoking. Voters are smarter than they were 30 and 40 years ago, because they have the information in front of them. Smoking kills. Secondhand smoke kills. The voters voted to eliminate smoking in many communities, and she asked that the committee vote no on this bill.

Brian Close of Bozeman, shared the contents of a restaurant business magazine that covers restaurants and bars nationwide. He said that 41 percent of those businesses state that the trade associations do not represent their views on this issue, but the business owners are afraid to speak out. He knows that is true in Gallatin County. The restaurant and bar owners who support smoke free are afraid to speak out. He gave the committee a copy of the page from the April 1, 2003 issue of Restaurant Business magazine, **EXHIBIT (bus74a12)**.

REP. JILL COHENOUR, HD 51, EAST HELENA, spoke of the Helena area delegation supporting the will of the people and asked the committee not to take away the right of a community to vote to kick out smokers from the bars.

REV. BOB HOLMES of Helena, opposed the bill on moral grounds. He distributed testimony from his wife, Polly Holmes, former legislator and author of Montana's Clean Indoor Air Act of 1979, **EXHIBIT (bus74a13)**.

KELLY O'SULLIVAN of Helena, strongly opposed HB 758 and submitted written testimony, **EXHIBIT (bus74a14)**.

Judy Scheier of Helena, said she voted for the non-smoking ordinance. The voters overwhelmingly decided this was what they wanted. As a community, they used their democratic rights to decide on it.

Myra Baca, Students Advocating Smoke Free Youth, asked the committee to think of the youth when voting on this bill.

Mona Jamison, Shodair Hospital, opposed the bill and stated this is clearly a health issue. One lobbyist said that the health risk was voluntary, but she asked the committee, "What about the taxpayers whose dollars go into the huge Medicaid budget?" Is that voluntary?

Rita Blouke, League of Women Voters of Montana, stated they educated themselves and knew what they were voting on.

Stan Frasier of Helena, said there is no private property right to do anything for a profit.

Sami Butler, Montana Nurses Association, submitted written testimony, **EXHIBIT (bus74a15)**

Jani McCall, Deaconess Billings Clinic, opposed the bill.

Pat Melby, Montana Medical Association, said their physician members oppose HB 758 and submitted a letter from them, **EXHIBIT (bus74a16)**

Tom Clinch, citizen, strongly opposed HB 758 and submitted written testimony, **EXHIBIT (bus74a17)**.

Jim Ahrens, Montana Hospital Association, rose in opposition to the bill and asked the committee to oppose it, too.

Cliff Christian, American Heart Association, opposed the bill and submitted written testimony, **EXHIBIT (bus74a18)**.

Catherine Dratz, citizen from Bozeman, submitted written testimony from Health Officers, Stephanie Nelson,

EXHIBIT (bus74a19), and Patti Steinmuller, **EXHIBIT (bus74a20)**, and asked the committee to oppose the bill.

Written testimony in opposition to HB 758 was received from **Verner Bertelsen, Montana Senior Citizens Association, EXHIBIT (bus74a21)**.

Questions from Committee Members and Responses:

SENATOR GLENN ROUSH directed his question to **Mayor Kadas** of Missoula. He need a little history about Missoula's concern with this bill and did not want to brand Missoula as an environmental community. **SEN. ROUSH** asked about the weather conditions, the inversion layer, vehicles, and industrial development in Missoula. **SEN. ROUSH** reminded **Mayor Kadas** that, at the last legislative session, the Clean Air Quality Act was relaxed a little bit concerning industrial plants in the Missoula area and statewide. With this issue, **SEN. ROUSH** wanted to know how Missoula finally come to a settlement to allow casinos and taverns to continue to have smoking. What **SEN. ROUSH** heard from the opponents of the bill is the concern for secondhand smoke, not smoking. **Mayor Kadas** replied that air quality has probably been Missoula's biggest environmental issue for the last 60 or 70 years. They have done quite a bit in that regard, and it has been painful. They have banned wood stoves, spending several hundreds of thousands of dollars each year on how they sand and use de-icer, so air quality issues are important to people in his community. With respect to this issue, they went through an 18-month process of considering all of the issues, looking at other locations on the west and east coasts who had done similar things, considering economic studies and public health issues, that would balance both the property rights and public health issues. He didn't think you could ever say one overrules the other automatically. He said it takes time and elected people to do the balancing necessary. **Mayor Kadas** did not feel the committee could come up with a decision after testimony of one hour. **SEN. ROUSH** asked how Missoula handled allowing smoking to take place. **Mayor Kadas** answered that it came down to whether they thought the economic consequences versus the public health consequences would be, particularly for employees of those establishments. We can say they have a choice. The employees can quit their job and get a job someplace else. A lot of times, that's a false choice. Most of us aren't eager to quit our job. If you're exposed to a known carcinogen because of where it is you work, that is a legitimate public issue. The city decided to be cautious and conservative about the issue. A majority of the city council is convinced that the tradeoffs between the

economics and public health aren't clear enough to them today, although that's not to say they won't be in the future.

SEN. VICKI COCCHIARELLA asked **Mayor Kadas** two "yes" or "no" questions. First, if the committee were to adopt Missoula's ordinance and put it in law, would he still be in opposition to this bill? His answer was "yes." The next question was if he would have the same opposition to this bill if a statewide ban were imposed on smoking. He answered that if the legislature took the time to really hear that issue rather than at the very tail of the session and, as a legislature, decided it was the appropriate thing to do, he wouldn't be as concerned with it. However, this is coming at the last minute.

SEN. COCCHIARELLA then asked **Mayor Kirchhoff of Bozeman** the same question regarding a ban on statewide smoking. He replied he would like to see the citizens across the state have the opportunity to participate in the passage of such a law.

Mr. Hansen was asked by **SEN. COCCHIARELLA** about the statistics he quoted in his testimony on a countywide drop in revenue. She wanted to know if he had the equivalent information regarding the city of Helena and their loss of revenue. **Mr. Hansen** replied that in the fiscal quarter beginning July 1, 2002, gambling revenues in the city of Helena were off \$56K, which is 11 percent. In the next quarter, beginning September 1, 2002, they were off \$68K, which is 13 percent. Over the same periods, there was a \$14K increase in Lewis and Clark County. In East Helena, there was a \$32K increase in gambling revenues in the quarter beginning July 1, 2002, and nearly \$40K in the quarter beginning in September 1, 2002.

SEN. DON RYAN questioned **Mayor Gray of Great Falls** about its ordinance in effect in Great Falls and if it was in effect before the passage of HB 124, which it was. **SEN. RYAN** then asked if the city considered the revenue that was coming to Great Falls and the impact it might have on businesses in Great Falls in determining which businesses would be allowed to opt out. **Mayor Gray's** response was, "Absolutely." The process in their city's committee took months and months. They had multiple public hearings, multiple opportunities for testimony both on the economic, medical and social aspects from individual business owners. The solution for their community was to allow casinos and taverns to opt out of the ordinance.

VICE CHAIRMAN MIKE SPRAGUE and **Mayor Gray** discussed what local governments think when federal or state governments legislate unfunded mandates.

{Tape: 2; Side: B}

SEN. SHERM ANDERSON questioned **Mr. Burton** about Helena's process of adopting the ordinance and if they looked at the cities who had already gone through the process. He wanted to know why Helena's ordinance is so much more restrictive than the others.

Mr. Burton stated they looked at ordinances not only in the state of Montana but several ordinances in other states as well. When it came time to make the decision, they felt that secondhand smoke was a clear and present danger and they chose to ban it for that very reason. **SEN. ANDERSON** followed with a hypothetical question that, if Helena's bill had been structured like Great Falls and Missoula, which strictly allow bars to allow smoking, how did **Mr. Burton** feel the vote would have come out. **Mr. Burton** did not know and none of the context of **SEN. ANDERSON'S** question existed in Helena.

SEN. ANDERSON asked **REP. COHENOUR** the same question. Her impression, if the initiative on the ballot had been similar to Missoula's and not quite as restrictive, was that it probably would have passed the same way. She said the Tavern Association brought the initiative process to a head. She thought the education process was very long in Helena and when the decision was finally made, it may not have lasted for a long period of time. The city of Helena may have looked back and said this ban is having an impact on our economic situation. The city commission could have re-evaluated the whole thing and gone back on it. When the people have spoken, you need to listen to them. Having 62 percent speak on this issue, it behooves legislators to listen.

SEN. ROUSH expressed his concern about secondhand smoke and a statewide smoking ban. He asked **Mr. Staples** what effect such a ban would have on the Montana tavern owners. **Mr. Staples** answered that, if you were to extrapolate from Helena, it would be substantial. On the other hand, at least it would be uniform as opposed to competing with a business a mile down the road that allows smoking and has stolen all of your customers. He discussed the cultural shift in the United States. The ultimate irony is that smoking bans do not cause a complete cessation of smoking. **SEN. ROUSH** wanted to know if **Mr. Staples** could correlate any issues between those other cities in Montana that already had smoking limitations in place in their cities and that of Helena to allow for an amendment on the bill. **Mr. Staples** was not sure that the bill could be amended to address that situation despite **REP. COHENOUR'S** testimony that may have been some willingness to amend that ordinance but for the election. No such willingness was ever demonstrated.

SEN. CAROLYN SQUIRES addressed **Ms. Leahy** about the rumor mill that she or someone in Missoula County have a plan with which to do the very same thing. **SEN. SQUIRES** expressed how nervous she was that **Ms. Leahy** possibly had an agreement between bar owners and others in Missoula. Now **SEN. SQUIRES** hears the same thing might be done in Missoula as occurred in Helena. **Ms. Leahy** answered that the comment she made in the paper related to **Dr. Shepard's** research. She has had several parties approach her department who want an all-out ban. They have not opened up the ordinance, which has been in place in 1999. It has to be passed by 20 people and she is not one of them. **SEN. SQUIRES** was still concern that there might be a reneging about to take place.

SEN. COCCHIARELLA questioned **Mr. Burton** if Helena's citizens council recommended to exempt bars and casinos. He believed that their recommendation had bars and casinos exempt.

SEN. COCCHIARELLA asked **Ms. Fix** about The River Grille and Fat Boy & Charlie's and whether or not both places have smoking. **Ms. Fix** stated they have smoking at the night club, but not at the restaurant. **SEN. COCCHIARELLA** asked **Ms. Fix** if they force anyone to smoke, which they do not.

SEN. SPRAGUE wanted to know if **Dr. Shepard** and **Dr. Sargent** still see patients. **SEN. SPRAGUE** asked **Dr. Shepard** if he serves smokers and non-smokers alike in his practice, which he does; however, no one is allowed to smoke in his office and he tries to get his smokers to quit.

SEN. SPRAGUE asked **REP. DEVLIN** about going back in time and changing the rules. He wanted to know if one of the reasons for this legislation was to make the law current. For example, if **SEN. SPRAGUE** decided he wanted to go into a casino or a restaurant and from now on he knew he would not be allowed to have smokers in his place, it was part of his business plan, and he made his decision predicated on his rights, was part of the intent of this legislation to set the rules from now on and not play "gotcha." **REP. DEVLIN** guessed part of the reason he made the bill retroactive was because people who have made business decisions a few years ago, invested in property and a license, did a business plan, and then a change came about which threw their figures out. He attempted to take this back to the same point in time that these people had, what an earlier bill called a vested property right. They made their decision; someone changed the rules; and now they don't have a viable business. **SEN. SPRAGUE** stated the city ordinance was passed and had a reach back effect, so HB 758 was introduced to create a reach back to

before the ordinance was passed. **REP. DEVLIN** confirmed that statement.

Closing by Sponsor:

REP. DEVLIN distributed a worksheet that showed the effect Helena's smoking ordinance had on gambling revenues, **EXHIBIT (bus74a22)**. He wanted to show that what happened in Helena was not indicative of any other tax jurisdiction in the state of Montana. He explained there was a loss of tax revenue to the state, a loss of jobs, loss of liquor sales and general business activity in the establishments affected by the smoking ban. He went on to say the bill is fairly simple in its context. All of the revenue from the tax collected under this bill would go into the general fund. He gave a quick overview of the entire bill.

{Tape: 3; Side: A}

EXECUTIVE ACTION ON HB 758

Motion: **SEN. ROUSH** moved HB 758.

Discussion:

SEN. ROUSH said it isn't with great joy that he made his motion; however, he comes from a rural community which is concerned about urban rules and laws flowing to them. This bill would not prohibit casinos and bars from opting out of a smoking ban. **SEN. ROUSH** discussed property rights issues as well as the overturning of a local ordinance.

SEN. COCCHIARELLA expressed her appreciation for what the city of Missoula has done. She worried about what might be undone and referenced the Indoor Clean Act. One thing they've seen in Missoula since the implementation of the ordinance is that several establishments have installed major smoke eliminators.

SEN. COCCHIARELLA discussed an industry which has huge state government oversight being undermined by a local ordinance with good intentions to protect the health of people without regard for what that investment is. She talked about her discussion with **CHAIRMAN MAHLUM** earlier when she wondered about people in the Missoula Valley decided they got sick and did not like the smell of horse manure, what business would you have left. She noted that **CHAIRMAN MAHLUM** raises horses. That's what she felt was being discussed at the hearing. She thought if this were a bill to ban smoking statewide, the issue of local control would go off of the table; therefore, she was going to vote for the

bill. While reluctant to do so, she thought there were better ways to stop people from smoking than to tear down people's businesses and that's through education and cessation programs and getting money directly to the people who need to quit.

SEN. SHERM ANDERSON spoke in opposition to the bill because it goes too far. When he was campaigning in Helena, that was the No.1 issue about which everyone wanted to address. He's still inclined to believe that if it would have come forward more similar to Missoula's ordinance, it still would have passed in the same magnitude. In the current state of this bill, **SEN. ANDERSON** felt he had to oppose it, because it opens it up too broadly and too openly and will have ramifications on Missoula and other communities. In doing so, he personally wished Helena would have worked on it a little harder.

SEN. SPRAGUE discussed those fighting in Iraq who are defending people's rights and, in some cases, the right to be wrong. For one person's rights to be greater than another person's rights is where we find ourselves in a dilemma.

Vote: Motion carried 10-1 with ANDERSON voting no.

ADJOURNMENT

Adjournment: 12:23 P.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus74aad)